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report of the society's physician stated that insured's personal habits and physical and mental condition made his prospects to attain the full life expectancy first class, but at the time the deputy clerk, examining physician, and other local officers knew of the falsity of the statements in the application as to insured's habits in the use of intoxicants. Held, that the society was bound by the knowledge of its agents, and was estopped from claiming a forfeiture because of the false statements in the application.

[Ed. Note.—For other cases, see Insurance, Cent. Dig. §§ 999-1015; Dec. Dig. § 379.* 9 Va.-W. Va. Enc. Dig. 353.]

NORFOLK & W. RY. CO. v. BOARD OF SUP'RS OF CARROLL COUNTY.

Sept. 9, 1909.

[65 S. E. 531.]

1. Counties (§ 208*)—Board of Supervisors—Right to Sue.—Under Code 1904, § 825, authorizing the board of supervisors of any county to sue as to matters connected with their duties, and section 944-a1, providing that boards of supervisors shall have the control of the county roads, etc., the board of supervisors of a county may sue a railroad company to compel it to build a sufficient new highway in lieu of the public highway taken by it for its road.

[Ed. Note.—For other cases, see Counties, Dec. Dig. § 208.* 3 Va.-W. Va. Enc. Dig. 693.]

2. Railroads (§ 95*)—Use of Public Highways for Road—Construction of New Highways.—A railroad company taking possession of a public highway for its use for its road, while Code 1887, § 1094, providing that a railroad may close or alter a public road only when it shall have made an equally convenient road in lieu thereof, was in force, must provide an equally convenient highway in lieu of the highway taken, and the fact that it proposed to build an equally convenient highway if permitted by the county court to occupy the existing highway, and that the court accepted the proposition and determined the plans to be observed in building the new highway, did not change the legal duty into a mere personal obligation.

[Ed. Note.—For other cases, see Railroads, Cent. Dig. §§ 274-283; Dec. Dig. § 95.* 12 Va.-W. Va. Enc. Dig. 935, 938, 954.]

3. Highways (§ 23*)—Right of State.—Public highways belong to the state, and the board of supervisors of the county in which a highway is located represents the state, and the Legislature alone represents the public at large with paramount authority over public highways.

*For other cases see same topic and section NUMBER in Dec. & Am. Digs. 1907 to date, & Reporter Indexes.

[Ed. Note.—For other cases, see Highways, Dec. Dig. § 23.* 12 Va.-W. Va. Enc. Dig. 885.]

4. Limitation of Actions (§ 11*)—Limitations as against State.—Limitations do not run against the state nor against a county board of supervisors representing the state.

[Ed. Note.—For other cases, see Limitation of Actions, Cent. Dig. §§ 35-39; Dec. Dig. § 11.* 9 Va.-W. Va. Enc. Dig. 375; 3 id. 694.]

5. Equity (§ 85*)—Laches—Right of State.—Laches is not available as a defense against the state nor as against a county board of supervisors representing the state.

[Ed. Note.—For other cases, see Equity, Cent. Dig. § 221; Dec. Dig. § 85.* 9 Va.-W. Va. Enc. Dig. 107; 375.]

6. Railroads (§ 93*)—Use of Public Highway—Construction of New Highway—Acceptance.—A railroad company erected its road on a public highway and built a new highway in lieu thereof. The county court refused to accept the new highway, but the public used it, and the county authorities from time to time repaired it. The new road was the only outlet left, and the people had no alternative but to use it. Held, that the use of the new highway was not evidence of an acceptance of it, and the county authorities could compel the railroad company or its successor to construct a proper highway.

[Ed. Note.—For other cases, see Railroads, Cent. Dig. §§ 274-283; Dec. Dig. § 95.* 12 Va.-W. Va. Enc. Dig. 938.]

7. Railroads (§ 129*)—Purchase of Property and Franchises of Railroad—Obligation of Purchaser.—The charter of a new railroad company purchasing the property and franchises of an existing company stipulated that it should be invested with all the title and interest of the existing corporation to the same extent as a purchaser under Code 1887, §§ 1233, 1234. Code 1887, § 1234, provides that the corporation created by the sale of the property and franchises of a railroad company under foreclosure shall succeed to its franchises and rights, and shall perform such duties as should have been performed by the first company but for such sale. The new company purchased under foreclosure proceedings the property and franchises of the original company. Held, that the new company must construct a new highway in lieu of the public highway taken and used by the original company for its road on the original company failing to construct such highway.

[Ed. Note.—For other cases, see Railroads, Cent. Dig. §§ 399-403; Dec. Dig. § 129.* 3 Va.-W. Va. Enc. Dig. 585.]

Judgment affirmed. All the judges concur.

*For other cases see same topic and section NUMBER in Dec. & Am. Digs. 1907 to date, & Reporter Indexes.